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SERVICE DATE - MARCH 7, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 158X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS

STB Docket No. AB-406 (Sub-No. 12X)

CENTRAL KANSAS RAILWAY LIMITED LIABILITY COMPANY
—DISCONTINUANCE OF SERVICE EXEMPTION—
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS

Decided: March 2, 2001

On October 24, 2000, Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) jointly filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit UP to abandon, and CKR to discontinue service over, a 28.02-mile line of railroad: (1) between milepost 523.02, near Geneseo and milepost 495.80, near Lindsborg (Hoisington Subdivision); and (2) between milepost 531.40 and milepost 530.60, near Lindsborg (McPherson Subdivision), in McPherson, Ellsworth and Rice Counties, KS.¹ By decision and notice of interim trail use or abandonment served February 9, 2001, the exemption was granted subject to trail use, public use, environmental conditions, and standard employee protective conditions.

In the February 9 decision and notice, the Board authorized a 180-day period for the City of Lindsborg, KS, to negotiate an interim trail use/rail banking agreement with UP for that portion of the right-of-way of the Hoisington Subdivision between milepost 495.8 and milepost 497.4, and for the entire right-of-way of the McPherson Subdivision. The negotiating period is scheduled to expire on August 8, 2001. Also, a 180-day public use condition was imposed under 49 U.S.C. 10905. The condition required UP to keep intact all of the right-of-way between milepost 495.8 and milepost 497.4, and for the entire right-of-way of the McPherson Subdivision, including bridges, trestles, culverts and tunnels (but not track and track materials) to permit public use negotiations. The 180-day period will expire on September 7, 2001.

On February 13, 2001, the City of Marquette, KS (Marquette) filed a request for a notice of interim trail use/rail banking (NITU) under 16 U.S.C. 1247(d) and 49 CFR 1152.29, and for a 180-day public use condition. Marquette states that it wishes to negotiate with UP for a 2-mile

¹ Notice of the filing was served and published in the Federal Register on November 13, 2000 (65 FR 67795).

segment of the Hoisington Subdivision, between mileposts 504.5 and 506.5, for use of the line as a recreational trail. Marquette submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. By letter filed February 21, 2001, UP states that it is willing to negotiate with Marquette for trail use, but opposes the imposition of an additional public use condition.

Trail use requests may be accepted as long as the Board retains jurisdiction over the right-of-way² and the carrier is willing to enter into negotiations. In view of UP's willingness to negotiate for trail use, a NITU will be issued under 49 CFR 1152.29 covering the above-described portion of right-of-way. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within 180 days, UP may fully abandon the line segment provided the conditions imposed in the February 9 decision and notice have been met. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

Marquette's public use request will be denied. Pursuant to 49 CFR 1152.28(a)(3), a request for a public use condition in an abandonment exemption granted on the basis of an individual petition for exemption filed under 49 U.S.C. 10502 must be filed not more than 20 days from the date of publication of notice of the filing of the petition in the Federal Register. In this case that deadline was December 4, 2000. Marquette's filing was not made until February 13, 2001. Accordingly, the request cannot and will not be entertained.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The request for an additional public use condition is denied.
3. Upon reconsideration, the decision and notice served on February 9, 2001, exempting the abandonment/discontinuance of service described above, is modified to the extent necessary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company—Abandonment—In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

to implement interim trail use/rail banking for the segment of right-of-way of the Hoisington Subdivision between milepost 504.5 and milepost 506.5 until September 3, 2001.

4. If an interim trail use/rail banking agreement is reached as to that portion of the right-of-way of the Hoisington Subdivision between milepost 504.5 and milepost 506.5, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may abandon that portion of the line, provided the conditions imposed in the February 9 decision and notice are met.

8. This decision and notice is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary